

**CIVIL SERVICE COMMISSION MINUTES**  
**FEBRUARY 4, 2009**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

Present were:

W. Dale Bailey  
A.Y. Casillas  
Barry I. Newman  
Francesca Krauel

Absent was:

None

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamarly, Executive Officer  
Karen F. Landers, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

**Approved**  
**Civil Service Commission**

**March 4, 2009**

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION  
REGULAR MEETING AGENDA  
FEBRUARY 4, 2009**

1:30 p.m.            CLOSED SESSION: Discussion of Personnel Matters  
and Pending Litigation

2:30 p.m.            OPEN SESSION: Room 358, 1600 Pacific Highway, San  
Diego, California

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<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
3,4,5,6,7,8,9,10,11		14	13

COMMENTS: Motion by Newman to approve all items not held for  
discussion; seconded by Krauel. Carried.

**CLOSED SESSION AGENDA  
County Administration Center, Room 400B  
(Notice pursuant to Government Code Sec. 54954.2)  
Members of the public may be present at this  
location to hear the announcement of the  
closed session agenda.**

A. Commissioner Bailey: PUBLIC EMPLOYEE PERFORMANCE  
EVALUATION (GOV. CODE SEC. 54957(b)) Julie Buechler,  
Esq., on behalf of **2008-10**, Deputy Sheriff, appealing  
the Citizens' Law Enforcement Review Board's sustained  
finding of misconduct.

B. Commissioner Casillas: CONSIDERATION OF PUBLIC  
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) **Kristina  
Bailey**, Protective Services Worker, appealing a Final  
Order of Suspension from the Health and Human Services  
Agency.

C. Commissioner Casillas: CONSIDERATION OF PUBLIC  
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Rory R.  
Wicks, Esq., on behalf of **Clay Clifton**, Environmental  
Health Specialist II, appealing an Order of Demotion  
and Charges (from Environmental Health Specialist III)  
from the Department of Environmental Health.

**OPEN SESSION AGENDA**  
**County Administration Center, Room 358**

**MINUTES**

1. Approval of the Minutes of the special meeting of January 14, 2009.

**Approved.**

**CONFIRMATION OF ASSIGNMENT**

2. Commissioner Casillas: Julie Buechler, Esq., on behalf of **2009-01**, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

**Confirmed.**

**CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

**Findings**

3. Commissioner Bailey: Julie Buechler, Esq., on behalf of **2008-10**, Deputy Sheriff, appealing the Citizens' Law Enforcement Review Board's sustained finding of misconduct.

**FINDINGS AND RECOMMENDATIONS:**

Employee is a Deputy Sheriff - Patrol. Employee appealed a sustained finding of misconduct by the Citizens Law Enforcement Review Board. CLERB found that Employee violated Sheriff's Department Policy and state law by accessing the California Law Enforcement Telecommunications System ("CLETS") for a purpose that was unrelated to Employee's duties as a law enforcement officer. It was undisputed at the hearing that appropriate use of CLETS included use related to suspicion of criminal activity and concerns regarding the safety of a law enforcement officer. Employee accessed CLETS to obtain information about his/her neighbor's boyfriend. The evidence at the hearing established that prior to accessing CLETS, Employee had complained to both his/her landlord and the neighbor's landlord about the neighbor and her boyfriend. The complaints included concerns regarding noise, smoking, and the appearance or character of the boyfriend. The evidence also established that Employee had observed that the neighbor's boyfriend bore a tattoo associated with a prison gang. At the hearing, there was conflicting evidence as to whether there were other indicia that could reasonably cause

Employee to be suspicious that the neighbor's boyfriend was a threat to Employee or was involved in ongoing criminal conduct. However, upon review of all the evidence, CLERB failed to prove to this Hearing Officer that Employee's reason for accessing CLETS was unrelated to concerns regarding Employee's safety or suspicion that the neighbor's boyfriend was involved in ongoing criminal activity.

It is therefore recommended that the allegation sustained by CLERB in the Complaint against Employee referred to as CLERB Case #07-103 be deemed Not Sustained; and that this proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Bailey to approve Findings and Recommendations; seconded by Krauel; discussion:**

**Commissioner Newman explained that he would vote against this motion because Employee did access CLETS for a purpose that was unrelated to his duties as a law enforcement officer.**

<b>AYES:</b>	<b>CASILLAS, KRAUEL BAILY</b>
<b>NOES:</b>	<b>NEWMAN</b>
<b>ABSTENTIONS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>NONE</b>

**Motion Carried.**

## **DISCIPLINE**

### **Findings**

4. Commissioner Casillas: **Kristina Bailey**, Protective Services Worker, appealing a Final Order of Suspension from the Health and Human Services Agency.

### **FINDINGS AND RECOMMENDATIONS:**

Employee is a Protective Services Worker in the Health & Human Services Agency. In the Final Order of Suspension, she is charged with incompetency, discourtesy, and unbecoming conduct. The Agency failed to prove four of the five charges related to the incompetency cause because its proof consisted entirely of hearsay evidence. However, the Agency proved the remaining charges in the Order with competent evidence, which included Employee's admissions. Furthermore, the Agency established that the conduct was consistent with conduct for which Employee had been

previously counseled. Despite the unproven charges, Employee's five work day suspension was consistent with the County Discipline Guide. Therefore, it is recommended that the Order of a five work day suspension be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Casillas to approve Findings and Recommendations; seconded by Krauel. Carried.**

5. Commissioner Casillas: Rory R. Wicks, Esq., on behalf of **Clay Clifton**, Environmental Health Specialist II, appealing an Order of Demotion and Charges (from Environmental Health Specialist III) from the Department of Environmental Health.

FINDINGS AND RECOMMENDATIONS:

Employee was an Environmental Health Specialist III in the Department of Environmental Health. He was demoted to Environmental Health Specialist II for sending an unauthorized email from his County email address. Employee did not dispute that he sent the email and that it was in violation of County policy and procedure. Rather, he disputed the level of discipline. At the Commission hearing, the Department proved that Employee had been previously disciplined and counseled for similar conduct. Additionally, the Department proved that it could not rely on Employee to avoid future similar misconduct in his current level of responsibility and autonomy. Accordingly, it is hereby recommended that the Commission affirm the Order of Demotion; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Casillas to approve Findings and Recommendations; seconded by Bailey. Carried.**

**DISCRIMINATION**

**Findings**

6. Commissioner Newman: **Reynaldo Maldonado**, former Animal Control Officer, alleging discrimination by the Department of Animal Services.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission (Commission) on September 3, 2008, the Commission appointed Barry I. Newman to investigate the complaint submitted by

Reynaldo Maldonado, which alleged racial discrimination and retaliation by the Department of Animal Services. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation and has reported its findings to the Commission.

The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the Investigating Officer who concurs with OIA's Report and has concluded that the evidence does not support a finding of probable cause that a violation of discrimination laws occurred. It is therefore recommended that Mr. Maldonado's Rule VI discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Newman to approve Findings and Recommendations; seconded by Bailey. Carried.**

7. Commissioner Newman: **Heidi Kay**, Office Assistant, alleging discrimination by the Department of Parks and Recreation. (See Item No. 11 below.)

**FINDINGS AND RECOMMENDATIONS:**

At the regular meeting of the Civil Service Commission (Commission) on November 5, 2008, the Commission appointed Barry I. Newman to investigate the complaint submitted by Heidi Kay, which alleged disability and racial discrimination as well as a hostile work environment by the Department of Parks and Recreation (Department). In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. Ms. Kay's complaint also included a request, under Civil Service Rule XI, for an investigation into the conduct and operations of the Department, which has been held in abeyance pending the outcome of the discrimination investigation. The OIA concluded the investigation and has reported its findings to the Commission.

The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the Investigating Officer who concurs with OIA's Report and has concluded that the evidence does not support a finding of probable cause that a

violation of discrimination laws occurred. It is therefore recommended that Ms. Kay's Rule VI discrimination complaint be denied; that the Commission determine that a Rule XI investigation is not warranted; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Newman to approve Findings and Recommendations; seconded by Krauel. Carried.**

8. Commissioner Krauel: **Kathleen McGlown**, Office Assistant, alleging discrimination by the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission (Commission) on November 5, 2008, the Commission appointed Francesca Krauel to investigate the complaint submitted by Kathleen McGlown, which alleged color and race discrimination, a hostile work environment and retaliation by the Health and Human Services Agency. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation and has reported its findings to the Commission.

The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the Investigating Officer. While it appears that some of the actions alleged by Ms. McGlown may have occurred, the actions do not appear to have risen to the level of a hostile work environment. Ms. McGlown failed to state how she has suffered an adverse employment action, thus there is no basis to warrant a hearing regarding these allegations. It is therefore recommended that Ms. McGlown's Rule VI discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Krauel to approve Findings and Recommendations; seconded by Newman. Carried.**

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9. Commissioner Krauel: **Ernesto Macareno-Carrasco**, Office Assistant, alleging discrimination by the Health and Human Services Agency.

**FINDINGS AND RECOMMENDATIONS:**

At the regular meeting of the Civil Service Commission (Commission) on November 5, 2008, the Commission appointed Francesca Krauel to investigate the complaint submitted by Ernesto Macareno-Carrasco, which alleged sex discrimination by the Health and Human Services Agency. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation and has reported its findings to the Commission.

The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the Investigating Officer. While it appears that some of the actions alleged by Mr. Macareno-Carrasco may have occurred, Mr. Macareno-Carrasco failed to state how the terms and conditions of his employment had been damaged by the actions. Thus there is no basis to warrant a hearing regarding these allegations. It is therefore recommended that Mr. Macareno-Carrasco's Rule VI discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Krauel to approve Findings and Recommendations; seconded by Bailey. Carried.**

10. Commissioner Casillas: **Martha Curatolo**, former Adult Protective Services Specialist, alleging discrimination by the Health and Human Services Agency.

Warren Beck, Esq., representing Ms. Curatolo, addressed the Commission prior to the reading of the Findings and Recommendations.

**FINDINGS AND RECOMMENDATIONS:**

At the regular meeting of the Civil Service Commission (Commission) on November 5, 2008, the Commission appointed A. Y. Casillas to investigate the complaint submitted by Martha Curatolo, which alleged retaliation discrimination by the Health and Human Services Agency. In accordance with



the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation and has reported its findings to the Commission.

The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the Investigating Officer who concurs with OIA's Report and has concluded that the evidence does not support a finding of probable cause that a violation of discrimination laws occurred. It is therefore recommended that Ms. Curatolo's Rule VI discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Casillas to approve Findings and Recommendations; seconded by Bailey. Carried.**

## **INVESTIGATIONS**

### **Request**

11. **Heidi Kay**, Office Assistant, requesting a Rule XI investigation regarding the conduct and operations of the Department of Parks and Recreation. (See Item No. 7 above.)

RECOMMENDATION: Take action consistent with the outcome of Ms. Kay's discrimination investigation.

**See Item No. 7 above: FINDINGS AND RECOMMENDATIONS.  
Request for Rule XI Investigation deemed not warranted.**

## **OTHER MATTERS**

12. Public Input.

## **INFORMATION**

13. **Aniceto Domingo**, Mail Carrier, withdrawal of complaint alleging discrimination by the Department of General Services. (Commissioner Casillas)

**Withdrawn.**

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14. The Rule VI discrimination complaint of **Richard Needham**, continued from the January 14, 2009 meeting is active, pending implementation of the Commission's Rule VII order of January 14, 2009.

Commissioner Newman addressed this point of information during the reading of the Consent Agenda. It is Commissioner Newman's understanding that Mr. Needham would have made his decision whether to go forward, or withdraw, his Rule VI complaint, once he and his counsel had thoroughly reviewed the Findings and Recommendations regarding his Rule VII appeal which was read at the January 14, 2009 meeting. At that meeting, Mr. Needham's counsel stated prior to the reading of the Findings, that if the Findings were in his client's favor, Mr. Needham would withdraw his Rule VI complaint. Mr. Needham would inform the Commission by February 4, 2009 as to how he wishes to proceed with his discrimination complaint.

Mr. Needham advised that he has not been made whole, pursuant to the Commission's Order of January 14, 2009. He is back to work, but has not received back pay. He therefore has not made a decision whether or not to withdraw his Rule VI complaint.

Commissioner Newman once again stated that his understanding was that Mr. Needham and his counsel wanted to review the Findings and Recommendations thoroughly before deciding on the Rule VI complaint. Commissioner Newman further stated that the decision on the Rule VI is not tied into the implementation of the Commission's order.

Commissioner Krauel offered that since no decision has been made by Mr. Needham and/or his counsel, and in fact they have had ample time to review the Commission's Findings, the Rule VI complaint should move forward and OIA should be advised to begin its investigation.

There being no further discussion from the Commission or Mr. Needham, the Commission concurred with Commissioner Krauel's suggestion. The Rule VI will be investigated by OIA.

This item was decided on the Consent Agenda.

ADJOURNED: 3:40 p.m.

**NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION:**

**MARCH 4, 2009**

**ASSISTANCE FOR THE DISABLED:**

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